

OFFICE OF THE
ATTORNEY GENERAL

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STATE OF ALABAMA

DEC 17 1987

Honorable Budd E. Baumgardner
Chairman
V.A.W. Water System, Inc.
P. O. Box 10
Vinemont, Alabama 35179

Water Boards - Utilities -
Officers and Offices -
Liability

Act 87-706 provides a limited immunity for officers of qualified entities including not-for-profit corporations exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1954 as amended.

Dear Mr. Baumgardner:

You have forwarded to this office the resolution of the Board of Directors of the V.A.W. Water System, Inc., requesting an opinion regarding the following matter:

"We are a non-profit corporation, incorporated under Title 10 Section 10-4-190 thru 10-4-209. We are exempt from federal income taxation under Section 501(c) of Internal Revenue Code of 1954 as amended. Our Board of Directors are elected by the general membership. Since the new law passed by the Senate Bill 233 of the 1987 Session (Act 87-706) can be interpreted several ways, and since the Board of Directors have been paying exorbitant prices for liability insurance coverage we ask does the V.A.W. Water System, Inc., a public corporation qualify for immunity from suit and civil liability under the provisions of said Senate Bill 233 of the 1987 Session?"

Act 87-706 provides in Section 3 as follows:

"Any non-compensated officer of a qualified entity shall be immune from suit and not subject to civil liability arising from the conduct of the affairs of such qualified entity except when the act or omission of such officer, which gives rise to a cause of action, amounts to willful or wanton misconduct or fraud, or gross negligence. Provided however, such immunity shall not, except to such extent as may otherwise be provided by law, extend to the qualified entity, to a for-profit subsidiary of such qualified entity or to the officers of such for-profit subsidiary but only to the qualified entity's officers as defined in this act. Nothing contained herein shall be construed to immunize the corporate entity or qualified entity for the acts or omissions of non-compensated officers as defined in this act."

Under Section 2 of the Act a qualified entity is defined in five subsections and includes:

"(1) Any not-for-profit corporation... exempt from federal income taxation under Section 501(c) of the Internal Revenue Code of 1954, as amended...."

The term "Officer" is defined in Section 2(c) of the Act as:

"Any officer, director, trustee or member of the governing body of a qualified entity who does not receive compensation for serving in such capacity."

The section goes on to exclude from compensation per diem of not more than \$300 per day, and actual, reasonable, and necessary expenses.

We note that Section 4 excludes from the immunity provisions any claim, cause of action or suit brought against an officer for personal injury or death or property damage arising out of an accident "inflicted by that officer while acting within the line and scope of said officer's duties."

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In addition, Section 5 excludes actions brought under Title 41, Chapter 5 of the Code of Alabama 1975, which relates to the Department of Examiners of Public Accounts.

In view of the foregoing, it is the opinion of this office that a not-for-profit corporation incorporated under Title 10, Sections 10-4-190 through 10-4-209 which is exempt from federal income tax under Section 501(c) of the Internal Revenue Code of 1954 as amended, is a qualified entity within the purview of Act 87-706, and its non-compensated officers, which would include directors, are accorded a limited immunity from suit arising from their conduct of the affairs of the entity. The entity itself is not immune from suit under the provisions of Act 87-706, nor are the officers immune from suit for personal injury, death or property damage arising out of an accident inflicted by the officer while acting within the line and scope of his duties, nor is an officer immune from suit under the provisions of Title 41, Chapter 5 of the Code of Alabama 1975.

You should also be aware that the state law has no effect upon litigation brought under federal law, and that, since the statute discussed has not been tested in court it may be advisable to continue your insurance coverage.

I trust that the foregoing answers the Board's question. If this office can be of further service to you or the Board, please let us know.

Yours very truly,

DON SIEGELMAN
Attorney General
By:



PHILIP C. DAVIS
Assistant Attorney General

DS/PCD/dn